

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES KERN,

Plaintiff,

v.

SACRAMENTO COUNTY POLICE
DEPARTMENT AND KRANTZ,

Defendants

Case No. 2:23-cv-00560-JDP (HC)

ORDER

Plaintiff brings this section 1983 case against the Sacramento County Police Department and several of its officers. ECF No. 1 at 2-3. He alleges that defendant Marquez, a detective, illegally detained him and searched his residence without a warrant in violation of the Fourth Amendment. *Id.* at 3. He seeks only monetary damages. *Id.* at 6. These allegations state a potentially cognizable claim against Marquez, but plaintiff must first indicate whether he is facing ongoing state criminal proceedings related to the alleged search and detention. If he is, then the court may stay his claim for damages until those proceedings have concluded. *See Wallace v. Kato*, 549 U.S. 384, 393-94 (2007) (“If a plaintiff files a false-arrest claim before he has been convicted (or files any other claim related to rulings that will likely be made in a pending or anticipated criminal trial), it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended.”). Within thirty days, plaintiff may file an amended complaint that explains whether he is

1 facing ongoing state criminal proceedings. If he does not, I am inclined to find his claim against
2 Marquez cognizable, but to stay service until plaintiff confirms his situation in state court.

3 Accordingly, it is ORDERED that:

4 1. Plaintiff should, within thirty days of this order's entry, file an amended complaint that
5 explains whether his allegations are related to ongoing state criminal proceedings. If plaintiff
6 fails to do so, I will enter an order explaining why plaintiff's claim against Marquez is viable, but
7 recommending that it be stayed pending plaintiff's indication of whether he is facing state
8 criminal proceedings.

9 2. The Clerk of Court is directed to send plaintiff a complaint form.

10 IT IS SO ORDERED.
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12 Dated: June 5, 2023


13 JEREMY D. PETERSON
14 UNITED STATES MAGISTRATE JUDGE

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